

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 13
)
HAROLD J. FARRIS) CASE NO. 04-95802-MHM
)
Debtor)

ORDER DENYING DEBTOR'S PETITIONS TO CHANGE JUDGES

On August 4, 2004, Debtor filed a Petition to Change Judges in this Case. On September 2, 2004, Debtor filed an Amended Petition to Change Judges in this Case. In both motions, Debtor seeks disqualification of the undersigned from presiding over Debtor's Chapter 13 case based on rulings by the undersigned and by the judge previously assigned to this case in two prior cases filed by Debtor.

Bankruptcy Rule 5004(a) provides that disqualification of a bankruptcy judge is governed by 28 U.S.C. §455, which provides:

- (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:
 - (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding...[.]

If the judge sitting on a case is aware of grounds for recusal under this section, the judge has a duty to recuse himself or herself. *U. S. v. Sibla*, 624 F.2d 864 (9th Cir. 1980); *In re*

Corrugated Container Antitrust Litigation, 614 F.2d 958 (5th Cir.), *cert. denied* 449 U.S. 888 (1980); *U.S. v. Battle*, 235 F.Supp.2d 1301 (N.D.Ga. 2001)(J. Evans).

Debtor's motions to recuse are legally insufficient to support disqualification. Alleged bias must be personal and it must stem from an **extra-judicial** source. *Loranger v. Stierheim*, 10 F.3d 776 (11th Cir. 1994); *U.S. v. Merkt*, 794 F.2d 950 (5th Cir. 1986); *U.S. v. Phillips*, 664 F.2d 971 (5th Cir. Unit B 1981).¹ A motion for disqualification may not rely upon conduct or facts learned by a judge in the judge's judicial capacity, including rulings in the case from which disqualification is sought. *Loranger v. Stierheim*, 10 F.3d 776; *Hale v. Firestone Tire & Rubber Co.*, 756 F.2d 1322 (8th Cir. 1985); *U.S. v. Bond*, 847 F.2d 1233 (7th Cir. 1988); *King v. U.S.*, 576 F.2d 432 (2d Cir.), *cert. denied*, 439 U.S. 850 (1978). In the instant case, Debtor relies solely upon rulings by the undersigned in this case or in prior cases filed by Debtor. Those rulings, however, were issued in a judicial capacity and cannot serve as a basis for disqualification. *See, U.S. v. Beneke*, 449 F.2d 1259 (8th Cir. 1971).

In rare cases, a judge may be disqualified if the record evidences pervasive bias and prejudice. *Loranger v. Stierheim*, 10 F.3d 776 (11th Cir. 1994). Debtor alleged no facts which would support a finding of such pervasive bias or prejudice. Therefore, Debtor's motions are without merit. Accordingly, it is hereby

ORDERED that Debtor's Petition to Change Judges in this Case and Amended

¹*Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981), renders decisions of the Fifth Circuit issued prior to September 30, 1981, binding precedent for the Eleventh Circuit.

Petition to Change Judges in this Case are DENIED.

The Clerk is directed to serve a copy of this order upon Debtor and the Chapter 13 Trustee.

IT IS SO ORDERED, this the ____ day of November, 2004.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE